

El Paso County - 171st District Court

Filed 11/18/2021 5:16 PM  
 Norma Favela Barceleau  
 District Clerk  
 El Paso County  
 2021DCV4058

CAUSE NO. \_\_\_\_\_

**CARLOS MOLINA-TORRES,****Plaintiff,****v.****SUNDT CONSTRUCTION, INC., JOSEPH  
 RICCILLO, and JOHN DOE****Defendants.**§  
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§**IN THE DISTRICT COURT**\_\_\_\_ **JUDICIAL DISTRICT****EL PASO COUNTY, TEXAS****PLAINTIFF'S ORIGINAL PETITION**

Plaintiff Carlos Molina-Torres ("Plaintiff") by and through undersigned counsel, comes before this Court and files his Original Petition against Defendant Sundt Construction, Inc. ("Defendant Sundt"), Defendant Joseph Riccillo ("Defendant Riccillo") and Defendant John Doe ("Defendant Doe") for causes of action shown as follows:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4.

**II. PARTIES**

2. Plaintiff Carlos Molina-Torres is an individual residing at 12945 Stonington Lane, El Paso, TX 79938. The last three digits of his driver's license and social security number are, respectively, 878 and 197.
3. Defendant Sundt Construction, Inc. is a foreign corporation incorporated under the laws of Arizona and doing business in Texas. Defendant Sundt may be served with process by serving its registered agent, CT Corp. System, located at 1999 Bryan St., Ste. 900, Dallas, Texas 75201-3136.

**PLAINTIFF'S ORIGINAL PETITION**

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**EXHIBIT B**

4. Defendant Joseph Riccillo is an individual domiciled and residing in El Paso County, Texas. Defendant Riccillo may be served with process at his residence located at 511 Gregory Ave., El Paso, Texas 79902, or wherever he may be found.
5. Defendant John Doe's identity is currently unknown. Upon information and belief, Defendant Doe is domiciled in Texas and was an employee of Defendant Sundt at all relevant times herein.

### **III. MISNOMER/ALTER EGO**

6. In the event any parties are misnamed or are not included herein, Plaintiffs contend that such is a "misidentification," and/or such parties are/were "alter egos" of parties named herein.

### **IV. JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over this lawsuit. Plaintiffs' claims involve Texas common law. The amount in controversy is within this Court's jurisdictional limit.
8. This Court has personal jurisdiction over the parties. All parties are either individuals or corporate residents of the State of Texas, have minimum sufficient contacts with the State of Texas, and/or have purposefully availed themselves of the laws and markets of the State of Texas so as to not offend traditional notions of fair play and substantial justice.
9. This Court is the proper venue to hear this lawsuit pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a) because all or a substantial part of the events or omissions giving rise to the claims occurred in El Paso County, Texas.
10. Pursuant to TEX. R. CIV. P. 47, Plaintiff seeks monetary relief over \$250,000 but not more than \$1,000,000. Plaintiff's counsel offers this statement for informational purposes only as required by TEX. R. CIV. P. 47 and reserves the right to change or amend it as the

evidence deems necessary. The amount of monetary relief actually awarded, however, will ultimately be determined by a jury. Plaintiff also seeks prejudgment and post-judgment interest at the highest legal rate.

## **V. FACTS**

11. On or about September 19, 2017, general contractor Defendant Sundt contracted with the City of El Paso to construct the Eastside Regional Park, a recreational development to include a community center, gymnasium, natatorium, and outdoor water park. Following the execution of the contract, Defendant Sundt began construction of the development located at 13501 Jason Crandall Drive, El Paso, Texas 79938 (the “construction site”).
12. Defendant Riccillo was employed by Defendant Sundt as the Project Director of the El Paso office at all relevant times herein. According to Defendant Sundt’s website, Defendant Riccillo is responsible for overseeing business development, planning, budgets, and staffing for Defendant Sundt’s construction jobs in El Paso.
13. Defendant Doe was employed by Defendant Sundt as the Construction Foreman for the construction site at all relevant times herein.
14. Prior to September 18, 2020, Defendant Doe and/or other employees of Defendant Sundt installed a temporary chain link fence (“the fence”) alongside Jason Crandall Drive. After installment, the fence frequently fell into the roadway of Jason Crandall Drive, creating a dangerous condition. Defendant Doe and other employees of Defendant Sundt had actual knowledge of this dangerous condition.
15. On or about September 18, 2020, at around 6:00 a.m., Plaintiff was riding his bicycle westbound on Jason Crandall Drive for his daily exercise. Plaintiff was traveling in a reasonable and prudent manner and was exercising ordinary care for his safety at all times

relevant herein.

16. As Plaintiff approached the construction site for the Eastside Regional Park to his right, his wheels collided into the fence that was lying in the roadway. Plaintiff was thrown from his bicycle onto the left side of the asphalt road, fracturing his clavicle.
17. After the collision, Plaintiff spoke with Defendant Doe, who stated that the fence frequently fell into the road and he had told his workers to try to fix it on multiple occasions. Despite these instructions, the fence continued to fall down.
18. Defendant Riccillo and Defendant Doe had actual and/or constructive knowledge that the fence constituted a dangerous condition, yet failed to make the dangerous condition reasonably safe or adequately warn Plaintiff of the dangerous condition.
19. As a result of the collision, Plaintiff has sustained, and will continue to sustain, severe physical pain, suffering, impairment, mental anguish, and physical disfigurement. Additionally, Plaintiff has incurred and will continue to incur out of pocket expenses, including past and future medical expenses.

## **VI. CAUSES OF ACTION**

### **A. Negligence of Defendant Joseph Riccillo and Defendant John Doe**

20. Plaintiff repleads the foregoing factual allegations as if here quoted verbatim and set forth herein at length.
21. Defendants Riccillo and Doe owed duties of ordinary care to Plaintiff and other motorists, cyclists, and pedestrians on the roadway. Defendant Riccillo and Doe's conduct as outlined above breached those duties through various acts and/or omissions, including but not limited to the following, each of which singularly or in combination with others, constitutes acts of negligence that were a direct and proximate cause of the occurrence in questions

**PLAINTIFF'S ORIGINAL PETITION**

*Carlos Molina-Torres v. Sundt Construction, Inc., et al.*

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and the resulting injuries or damages set forth herein:

- a. Failing to properly install the fence;
- b. Failing to properly maintain the fence;
- c. Failing to warn motorists, cyclists, and pedestrians of the fence;
- d. Failing to remove the fence from the roadway;
- e. Failing to adhere to relevant safety regulations;
- f. Failing to follow Defendant Sundt's applicable safety protocol;
- g. Failing to report the fence to the appropriate safety officer; and
- h. Violating OSHA regulations and standards by creating unsafe means for pedestrian traffic flow.

**B. Negligence *Per Se* of All Defendants**

- 22. Plaintiff repleads the foregoing factual allegations as if here quoted verbatim and set forth herein at length.
- 23. In addition to other counts, Defendants' conduct as outlined above constitutes negligence *per se* as they violated **OSHA regulation 1926.752(c)(1)**, with regard to the construction site layout, which states in relevant part:

*"The controlling contractor shall ensure that the following is provided and maintained: Adequate access roads into and through the site for the safe delivery and movement of derricks, cranes, trucks, other necessary equipment, and the material to be erected and means and methods for pedestrian and vehicular control."*

- 24. In addition to other counts, Defendants' conduct as outlined above constitutes negligence *per se* as they violated **City of El Paso Ordinance 20.16.050**, with regard to the installation and maintenance of the fence, which states in relevant part:

*"Fences and walls shall be maintained in good repair and shall be kept vertical, uniform, and structurally sound."*

25. Defendants violated the above-referenced rules and regulations in the moments leading up to and at the time of the collision described herein.
26. Plaintiff, as a cyclist on the roadway, is a member of the class of persons the above-referenced rules and regulations were designed to protect. Defendants have no excuse for their violations of the above-referenced rules and regulations.
27. Defendants' violations of the above-referenced rules and regulations proximately caused Plaintiff's injuries.
28. Accordingly, Defendants are negligent *per se*.

**C. *Respondeat Superior***

29. Plaintiff repleads the foregoing factual allegations as if herein quoted verbatim and set forth herein at length.
30. Without waiving the foregoing, in conjunction with, additionally and/or alternatively, Plaintiff would further show this Court that Defendants Riccillo and Doe were in the course and scope of their employment with Defendant Sundt at all relevant times herein.
31. Under the doctrine of *Respondeat Superior*, Defendant Sundt is responsible for Plaintiff's damages caused by Defendants Riccillo and Doe's negligence and negligence *per se* as alleged above.

**D. *Negligent Hiring by Defendant Sundt***

32. Plaintiff repleads the foregoing factual allegations as if herein quoted verbatim and set forth herein at length.
33. Defendant Sundt was negligent in the hiring of Defendant Doe in that Defendant Sundt

knew, or in the exercise of reasonable care should have known, that Defendant Doe was unfit or unqualified for a position as a construction foreman to safely manage a construction site under the control of Defendant Sundt.

34. Defendant Sundt was further negligent in the hiring of Defendant Riccillo in that Defendant Sundt knew, or in the exercise of reasonable care should have known, that Defendant Riccillo was unfit or unqualified for a position as a project director to safely staff, plan, and oversee a construction site under the control of Defendant Sundt.

**E. Negligent Training by Defendant Sundt**

35. Plaintiff repleads the foregoing factual allegations as if herein quoted verbatim and set forth herein at length.
36. Defendant Sundt was negligent in the training of Defendant Doe, in that Defendant Sundt knew, or in the exercise of reasonable care should have known, that Defendant Doe was unfit or unqualified for a position in which he was required to safely manage a construction site under the control of Defendant Sundt. Defendant Sundt refused to properly train and/or instruct Defendant Doe for the job he was to perform and for the safe management of a construction site under the control of Defendant Sundt. Defendant Sundt allowed Defendant Doe to manage a construction site under the control of Defendant Sundt when it knew or should have known that Defendant Doe was not capable of or qualified of safely doing so.
37. Defendant Sundt was further negligent in the training of Defendant Riccillo, in that Defendant Sundt knew, or in the exercise of reasonable care should have known, that Defendant Riccillo was unfit or unqualified for a position in which he was required to safely staff, plan, and oversee a construction site under the control of Defendant Sundt.

Defendant Sundt refused to properly train and/or instruct Defendant Riccillo for the job he was to perform and for the safe management of a construction site under the control of Defendant Sundt. Defendant Sundt allowed Defendant Riccillo to staff, plan, and oversee a construction site under the control of Defendant Sundt when it knew or should have known that Defendant Riccillo was not capable of or qualified of safely doing so.

**F. Negligent Supervision by Defendant Sundt**

38. Plaintiff repleads the foregoing factual allegations as if herein quoted verbatim and set forth herein at length.
39. Defendant Sundt was negligent in the supervision of Defendant Doe in that Defendant Sundt knew, or in the exercise of reasonable care should have known, that Defendant Doe was unfit or unqualified for a position which he was required to safely manage a construction site under the control of Defendant Sundt. Defendant Sundt refused to supervise Defendant Doe for the job that he was to perform. Defendant Sundt refused to supervise Defendant Doe on the date of the incident in question and allowed or refused to prevent Defendant Doe from managing the construction site in an unsafe manner.
40. Defendant Sundt was further negligent in the supervision of Defendant Riccillo in that Defendant Sundt knew, or in the exercise of reasonable care should have known, that Defendant Riccillo was unfit or unqualified for a position which he was required to safely staff, plan, and oversee a construction site under the control of Defendant Sundt. Defendant Sundt refused to supervise Defendant Riccillo for the job that he was to perform. Defendant Sundt refused to supervise Defendant Riccillo on the date of the incident in question and allowed or refused to prevent Defendant Riccillo from staffing, planning, and overseeing the construction site in an unsafe manner.

**G. Negligent Retention by Defendant Sundt**

41. Plaintiff repleads the foregoing factual allegations as if herein quoted verbatim and set forth herein at length.
42. Defendant Sundt was negligent in the retention of Defendant Doe, in that Defendant Sundt knew or in the exercise of reasonable care should have known, that Defendant Doe was unfit or unqualified for a position which he was required to safely manage a construction site under the control of Defendant Sundt. Defendant Sundt negligently retained Defendant Doe prior to the date of the incident in question, and allowed, or failed to prevent, Defendant Doe from managing the construction site in an unsafe manner.
43. Defendant Sundt was further negligent in the retention of Defendant Riccillo, in that Defendant Sundt knew or in the exercise of reasonable care should have known, that Defendant Riccillo was unfit or unqualified for a position which he was required to safely staff, plan, and oversee a construction site under the control of Defendant Sundt. Defendant Sundt negligently retained Defendant Riccillo prior to the date of the incident in question, and allowed, or failed to prevent, Defendant Riccillo from staffing, planning, and overseeing the construction site in an unsafe manner.

**H. Premises Liability**

44. Plaintiff repleads the foregoing factual allegations as if herein quoted verbatim and set forth herein at length.
45. Defendants were in possession of the subject premises at all relevant times herein.
46. Plaintiff had a right to be on the premises possessed by Defendants at all relevant times herein.
47. The fence constituted a condition on the subject premises that posed an unreasonable risk

of harm.

48. Defendants knew or reasonably should have known of the dangerous condition posed by the fence in the unlit roadway.
49. Defendants breached their duty of care by failing to adequately warn Plaintiff of the dangerous condition and failing to make the dangerous condition reasonably safe.
50. Defendants' breach of duty was a proximate cause of Plaintiff's damages.

#### **VII. DAMAGES**

51. As a direct and proximate result of the incident making the basis of this lawsuit, Plaintiff has suffered and will in all reasonable probability continue to suffer the following actual damages, the dollar value of which exceeds the minimal jurisdictional limits of this Court:
  - a. Medical treatment paid or incurred in the past;
  - b. Medical treatment which may be paid or incurred in the future;
  - c. Past and future pain and suffering;
  - d. Past and future physical impairment;
  - e. Past and future physical disfigurement; and
  - f. Past and future mental anguish.
52. Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.

#### **VIII. TEX. R. CIV. P. 193.7 NOTICE**

45. Pursuant to Tex. R. Civ. P. 193.7, Plaintiff hereby gives notice of intent to utilize items produced in discovery against the producing party.

#### **IX. PRAYER**

46. WHEREFORE, Plaintiff requests that Defendants be cited to appear and answer, and that on final trial Plaintiff has:

- a. Judgment against Defendants for all of Plaintiff's actual damages, both general and special as described above;
- b. Judgment against Defendants for pre-judgment and post-judgment interest at the legal rate to the extent allowed under the law until paid;
- c. Judgment against Defendants for costs of court as authorized by Tex. R. Civ. P. 131; and
- d. All other just and lawful relief in law and in equity, general and specific, to which the Plaintiff may be duly and justly entitled.

Respectfully submitted,

**Zinda Law Group, PLLC**  
8834 North Capital of Texas Highway  
Suite 304  
Austin, Texas 78759  
(512) 246-2224 Office  
(512) 580-4252 FAX  
Service of Documents: [service@zdfirm.com](mailto:service@zdfirm.com)

By: 

Cole Gumm  
State Bar No. 24088963  
Christina Rosendahl  
State Bar No. 24121097  
**ATTORNEYS FOR PLAINTIFF**



**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Raisa Hernandez on behalf of Cole Gumm  
Bar No. 24088963  
rhernandez@zdfirm.com  
Envelope ID: 59315414  
Status as of 11/23/2021 10:22 AM MST

**Case Contacts**

Name	BarNumber	Email	TimestampSubmitted	Status
Cole Gumm		service@zdfirm.com	11/18/2021 5:16:06 PM	SENT

E-FILING REQUEST FOR ISSUANCE

PLEASE USE THIS FORM WHEN REQUESTING ISSUANCE OF THE SERVICES LISTED BELOW THROUGH THE E-FILING SYSTEM.

THIS FORM DOES NOT APPLY TO: ABSTRACTS, WRIT OF EXECUTION, WRIT OF ALIAS EXECUTION, WRIT OF POSSESSION, ORDER OF SALE, SUBPOENAS AND SPOUSAL WITHOLDING. FORM AVAILABLE ONLINE AT <http://www.epcounty.com/districtclerk/forms.htm>

Date: 11/18/2021 Requested by: Cole Gumm

Cause No. Carlos Molina-Torres v. Sundt Construction, Inc., et al. Phone No. (512) 246-2224

Mail back to: please email citations to service@atxprocess.com

or to be Picked Up by:

- This document **MUST** be filed as a separate lead document when e-filing.
- Use the filing code “Request” and add the type of issuance in the filing description field.
- Select the type of issuance using the “Optional Services” section on the e-filing screen.
- Citations need a copy of the conformed original petition.
- TRO’s, Show cause notices, Capias and Citations by posting and publication require a copy of the corresponding orders.
- If applicable you must add the copies using the “Optional Services”, select Copies – Non-Certified and add as many pages as needed. (For Example: Petition is 5 pages, 3 citations are requested: 5x3=15 pages will need to be printed by Clerk)

Issuance Type	Fee:	Quantity	Service Type	Fee:	Quantity
Citation	\$8.00	2	Service by Certified Mail	\$57.00	
Citation By Mail	\$8.00		Service by Registered Mail (Rule 736)	\$5.00	
Citation Non Resident	\$8.00		Mail back to Process Server	\$5.00	
TRO	\$8.00		Service by Sheriff Personal Service	\$100.00	
Show Cause Notice	\$8.00		Service by Sheriff Posting	\$65.00	
Writ of Garnishment	\$8.00		Service by Sheriff Publication	\$65.00	
Bill of Cost	\$5.00				
Capias	\$8.00				

Notes to the Clerk
Thank you!

Thank you for E-Filing.

### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Raisa Hernandez on behalf of Cole Gumm  
Bar No. 24088963  
rhernandez@zdfirm.com  
Envelope ID: 59315414  
Status as of 11/23/2021 10:22 AM MST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Cole Gumm		service@zdfirm.com	11/18/2021 5:16:06 PM	SENT

## THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org"

TO: **SUNDT CONSTRUCTION, INC.**, who may be served with process by serving its registered agent **CT CORP. SYSTEM** at **1999 BRYAN STREET, SUITE 900, DALLAS, TX 75201-3136**, or wherever he/she may be found.

Greetings:

You are hereby commanded to appear by filing a written answer to the **Plaintiff's Original Petition** at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable **171<sup>st</sup> Judicial District Court**, El Paso County, Texas, at the Court House of said County in El Paso, Texas.

Said Plaintiff's Petition was filed in said court on this the 18<sup>th</sup> day of November, 2021 by Attorney at Law, **COLE ELLSWORTH GUMM**, 8834 NORTH CAPITAL OF TEXAS HIGHWAY, SUITE 304, AUSTIN, TX 78759 in this case numbered **2021DCV4058** on the docket of said court, and styled:

**CARLOS MOLINA-TORRES,**  
V.  
**SUNDT CONSTRUCTION, INC., JOSEPH RICCILLO, AND JOHN DOE**

The nature of Plaintiff's demand is fully shown by a true and correct copy of the **Plaintiff's Original Petition** accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at El Paso, Texas, on this the 24<sup>th</sup> day of November, 2021.

CLERK OF THE COURT

**NORMA FAVELA BARCELEAU**  
District Clerk  
Enrique Moreno County Courthouse  
500 E. San Antonio Ave, RM 103  
El Paso, Texas 79901



Attest: NORMA FAVELA BARCELEAU District Clerk  
El Paso County, Texas

By: \_\_\_\_\_ Deputy

Yessenia Maddaford

**SERVICE RETURN ATTACHED**

Rule 106: "-the citation shall be served by the officer delivering to each defendant, in person, a true copy of the citation with the date of delivery endorsed thereon and with a copy of the petition attached thereto."

**ATX Process, LLC**  
604 West 9th Street  
Suite B  
Austin, TX 78701

**RETURN**

Came on hand on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and executed in \_\_\_\_\_ County, Texas, by delivering to each of the within-named defendants, in person, a true copy of this Citation, having first endorsed thereon the date of delivery, together with the accompanying true and correct copy of the **Plaintiff's Original Petition**, at the following times and places, to-wit:

NAME	DATE			TIME			Place, and Course and Distance
	MONTH	DAY	YEAR	Hour	Min.	____.M.	From Court House

And not executed as to the defendant, \_\_\_\_\_

The diligence used in finding said defendant, being \_\_\_\_\_

And the cause of failure to execute this process is: \_\_\_\_\_

And the information received as to the whereabouts of the said defendant, being \_\_\_\_\_

FEES—SERVING \_\_\_\_\_ copy \_\_\_\_\_ \$ \_\_\_\_\_ Sheriff  
\_\_\_\_\_ County, Texas

Total \_\_\_\_\_ \$ \_\_\_\_\_ by \_\_\_\_\_, Deputy

**CERTIFICATE OF DELIVERY**

I do hereby certify that I delivered to \_\_\_\_\_

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_ m. this copy of this instrument.

\_\_\_\_\_, Sheriff/Agent

\_\_\_\_\_, County, Texas

By \_\_\_\_\_, Deputy/Agent

**SUBSCRIBED AND SWORN TO BEFORE ME ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.**

**(SEAL)**

\_\_\_\_\_  
**NOTARY PUBLIC, STATE OF TEXAS**

**ATX Process, LLC**  
604 West 9th Street  
Suite B  
Austin, TX 78701

**SERVICE RETURN ATTACHED**

**AFFIDAVIT OF SERVICE**

State of Texas

County of El Paso

171st Judicial District Court Court

Case Number: 2021DCV4058

Plaintiff:

Carlos Molina-Torres,

vs.

Defendant:

Sundt Construction, Inc., Joseph Riccillo, and John Doe

For: Zinda Law Group, PLLC

Received by ATX Process, LLC on the 29th day of November, 2021 at 8:44 am to be served on Sundt Construction, Inc. by serving its registered agent CT Corporation System, 1889 Bryan St, Suite 900, Dallas, Dallas County, TX 75201. I, Caleb Malone, being duly sworn, depose and say that on the 30 day of November, 2021 at 11:20 AM, executed service by delivering a true copy of the Citation and Plaintiff's Original Petition in accordance with state statutes in the manner marked below:

☒ CORPORATE SERVICE: By delivering to Brett Bagwell (individual accepting) as in-house legalist (title), at 1889 Bryan St, Suite 900 (street), Dallas (city), Texas (state), 75201 (zip code) Dallas (county).

( ) PUBLIC AGENCY: By delivering to \_\_\_\_\_ (individual accepting) as \_\_\_\_\_ (title) of the within-named agency at \_\_\_\_\_ (street), \_\_\_\_\_ (city), \_\_\_\_\_ (state) \_\_\_\_\_ (zip code) \_\_\_\_\_ (county).

( ) SUBSTITUTE SERVICE: By delivering to \_\_\_\_\_ (individual accepting) as \_\_\_\_\_ (relationship/title) at \_\_\_\_\_ (street), \_\_\_\_\_ (city), \_\_\_\_\_ (state) \_\_\_\_\_ (zip code) \_\_\_\_\_ (county).

( ) GOVERNMENT AGENCY: By delivering to \_\_\_\_\_ (individual accepting) as \_\_\_\_\_ (title) of the within-named agency at \_\_\_\_\_ (street), \_\_\_\_\_ (city), \_\_\_\_\_ (state) \_\_\_\_\_ (zip code) \_\_\_\_\_ (county).

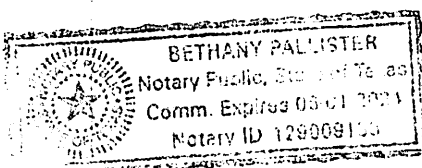
( ) NON SERVICE: For the reason detailed in the comments below.

COMMENTS: \_\_\_\_\_

I certify that I am over the age of 18, have no interest in the above action, and have the proper authority in the jurisdiction in which this process was delivered. The facts in this affidavit are within my personal knowledge and true and correct.

Subscribed and sworn to before me on the 30 day of November, 2021, by the affiant who is personally known to me.

Bethany Pallister  
NOTARY PUBLIC



PROCESS SERVER # 15C1574 exp 10/31/23  
Appointed in accordance with State Statutes

ATX Process, LLC  
604 West 9th Street  
Suite B  
Austin, TX 78701  
(512) 717-5600

Our Job Serial Number: 2021012633  
Ref: Carlos Molina-Torres



THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org"

TO: **JOSEPH RICCILLO**, who may be served with process at **511 GREGORY AVE, EL PASO, TX 79902**, or wherever he/she may be found.

Greetings:

You are hereby commanded to appear by filing a written answer to the **Plaintiff's Original Petition** at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable **171<sup>st</sup> Judicial District Court**, El Paso County, Texas, at the Court House of said County in El Paso, Texas.

Said Plaintiff's Petition was filed in said court on this the 18<sup>th</sup> day of November, 2021 by Attorney at Law, **COLE ELLSWORTH GUMM**, 8834 NORTH CAPITAL OF TEXAS HIGHWAY, SUITE 304, AUSTIN, TX 78759 in this case numbered **2021DCV4058** on the docket of said court, and styled:

**CARLOS MOLINA-TORRES**  
V.  
**SUNDT CONSTRUCTION, INC., JOSEPH RICCILLO, AND JOHN DOE**

The nature of Plaintiff's demand is fully shown by a true and correct copy of the **Plaintiff's Original Petition** accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at El Paso, Texas, on this the 24<sup>th</sup> day of November, 2021.

CLERK OF THE COURT

**NORMA FAVELA BARCELEAU**  
District Clerk  
Enrique Moreno County Courthouse  
500 E. San Antonio Ave, RM 103  
El Paso, Texas 79901



Attest: NORMA FAVELA BARCELEAU District Clerk  
El Paso County, Texas

By: Yesenia Maddafor Deputy  
Yesenia Maddafor

Rule 106: "-the citation shall be served by the officer delivering to each defendant, in person, a true copy of the citation with the date of delivery endorsed thereon and with a copy of the petition attached thereto."

**ATX Process, LLC**  
604 West 9th Street  
Suite B  
Austin, TX 78701



**RETURN**

Came on hand on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and executed in \_\_\_\_\_ County, Texas, by delivering to each of the within-named defendants, in person, a true copy of this Citation, having first endorsed thereon the date of delivery, together with the accompanying true and correct copy of the **Plaintiff's Original Petition**, at the following times and places, to-wit:

NAME	DATE			TIME			Place, and Course and Distance
	MONTH	DAY	YEAR	Hour	Min.	____.M.	From Court House

And not executed as to the defendant, \_\_\_\_\_

The diligence used in finding said defendant, being \_\_\_\_\_

And the cause of failure to execute this process is: \_\_\_\_\_

And the information received as to the whereabouts of the said defendant, being \_\_\_\_\_

FEES—SERVING \_\_\_\_\_ copy \_\_\_\_\_ \$ \_\_\_\_\_ Sheriff \_\_\_\_\_ County, Texas

Total \_\_\_\_\_ \$ \_\_\_\_\_ by \_\_\_\_\_, Deputy

**CERTIFICATE OF DELIVERY**

I do hereby certify that I delivered to \_\_\_\_\_

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m. this copy of this instrument.

**SERVICE RETURN ATTACHED**

**ATX Process, LLC**  
604 West 9th Street  
Suite B  
Austin, TX 78701

\_\_\_\_\_, Sheriff/Agent

\_\_\_\_\_, County, Texas

By \_\_\_\_\_, Deputy/Agent

**SUBSCRIBED AND SWORN TO BEFORE ME ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.**

**(SEAL)**

\_\_\_\_\_  
**NOTARY PUBLIC, STATE OF TEXAS**

**AFFIDAVIT OF SERVICE**

State of Texas

County of El Paso

171st Judicial District Court Court

Case Number: 2021DCV4058

Plaintiff:

Carlos Molina-Torres,

vs.

Defendant:

Sundt Construction, Inc., Joseph Riccillo, and John Doe

For: Zinda Law Group, PLLC

Received by ATX Process, LLC on the 28th day of November, 2021 at 8:44 am to be served on Joseph Riccillo, 511 Gregory Ave, El Paso, El Paso County, TX 79902. I, Sergio Martinez, being duly sworn, depose and say that on the 3 day of December 2021 at 10:27 am., executed service by delivering a true copy of the Citation and Plaintiff's Original Petition in accordance with state statutes in the manner marked below:

☒ INDIVIDUAL SERVICE: Delivered to the within-named person at 909 Texas Ave (street), El Paso (city), TX (state) 79901 (zip code) El Paso (county). (meeting place)

( ) SUBSTITUTE SERVICE: By delivering to \_\_\_\_\_ (individual accepting) as \_\_\_\_\_ (relationship/title) at \_\_\_\_\_ (street), \_\_\_\_\_ (city), \_\_\_\_\_ (state) \_\_\_\_\_ (zip code) \_\_\_\_\_ (county).

( ) POSTED SERVICE: After attempting service to the \_\_\_\_\_ FRONT DOOR OR \_\_\_\_\_ FRONT GATE (mark one) on the property described at \_\_\_\_\_ (street), \_\_\_\_\_ (city), \_\_\_\_\_ (state) \_\_\_\_\_ (zip code) \_\_\_\_\_ (county).

( ) NON SERVICE: For the reason detailed in the Comments below.

Military Status: ( ) Yes or ( ) No If yes, what branch? \_\_\_\_\_

Marital Status: ( ) Married or ( ) Single Name of Spouse \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I certify that I am over the age of 18, have no interest in the above action, and have the proper authority in the jurisdiction in which this process was delivered. The facts in this affidavit are within my personal knowledge and true and correct.

Subscribed and sworn to before me on the 3 day of December 2021 by the affiant who is personally known to me.

Rosa Cuenter  
 NOTARY PUBLIC



Sergio Martinez  
 Sergio Martinez  
 PROCESS SERVER # PSC1521 Exp. 10/31/23  
 Appointed in accordance with State Statutes

ATX Process, LLC  
 604 West 9th Street  
 Suite B  
 Austin, TX 78701  
 (512) 717-5600

Our Job Serial Number: 2021012635  
 Ref: Carlos Molina-Torres

IN THE 171<sup>st</sup> DISTRICT COURT

EL PASO COUNTY, TEXAS

CARLOS MOLINA-TORRES,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Case No. 2021DCV4058
	§	
SUNDT CONSTRUCTION, INC.,	§	
JOSEPH RICCILLO, and JOHN DOE,	§	
	§	
Defendants.	§	

---

DEFENDANTS SUNDT CONSTRUCTION, INC. AND JOSEPH RICCILLO’S  
ORIGINAL ANSWER

---

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants **SUNDT CONSTRUCTION, INC. and JOSEPH RICCILLO** and file this Original Answer and say:

I.

Pursuant to Texas Rule of Civil Procedure 92, Defendants would enter a general denial as to Plaintiff’s pleadings.

II.

Defendants request trial by jury.

**WHEREFORE, PREMISES CONSIDERED,** Defendants prays they be allowed to go hence without day and with their costs.

Respectfully submitted,

**MOUNCE, GREEN, MYERS,  
SAFI, PAXSON & GALATZAN**  
A Professional Corporation  
P.O. Box 1977  
El Paso, Texas 79999-1977  
(915) 532-2000  
(915) 541-1597 (fax)

/s/ James A. Martinez  
**James A. Martinez**  
State Bar No. 00791192  
[martinezja@jmeplaw.com](mailto:martinezja@jmeplaw.com)

*Attorneys for Defendants Sundt Construction, Inc.  
and Joseph Riccillo*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was transmitted to:

Cole Gumm  
Zinda Law Group, PLLC  
8834 North Capital of Texas Highway, Suite 304  
Austin, Texas 78759  
[service@zdfirm.com](mailto:service@zdfirm.com)

\_\_\_\_\_ via Hand Delivery  
\_\_\_\_\_ via Certified Mail  
\_\_\_\_\_ via Regular Mail  
\_\_\_\_\_ via Email:  
  X   via Efile

on this the 27th day of December, 2021.

/s/ James A. Martinez  
**JAMES A. MARTINEZ**

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Barbara Divis on behalf of James Martinez  
 Bar No. 791192  
 BDivis@mgmsg.com  
 Envelope ID: 60314389  
 Status as of 12/28/2021 8:20 AM MST

Associated Case Party: Sundt Construction, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Barbara Divis		bdivis@mgmsg.com	12/27/2021 1:57:17 PM	SENT
James Martinez		martinezja@jmeplaw.com	12/27/2021 1:57:17 PM	SENT
James Martinez		eservice@jmeplaw.com	12/27/2021 1:57:17 PM	SENT

Associated Case Party: Joseph Riccillo

Name	BarNumber	Email	TimestampSubmitted	Status
James Martinez		martinezja@jmeplaw.com	12/27/2021 1:57:17 PM	SENT
James Martinez		eservice@jmeplaw.com	12/27/2021 1:57:17 PM	SENT

CAUSE NO. 2021DCV4058

CARLOS MOLINA-TORRES,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	171 <sup>st</sup> JUDICIAL DISTRICT
SUNDT CONSTRUCTION, INC., JOSEPH	§	
RICCILLO, and JOHN DOE	§	
	§	
Defendants.	§	
	§	EL PASO COUNTY, TEXAS

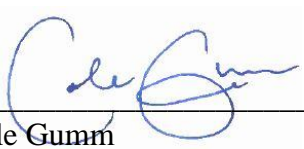
PLAINTIFF’S CERTIFICATE OF WRITTEN DISCOVERY

Plaintiff Carlos Molina-Torres certifies that the following discovery responses were served on all parties to this matter by and through their attorneys of record on January 26, 2022:

- 1. Plaintiff’s Initial Disclosures

Respectfully submitted,

**Zinda Law Group, PLLC**  
8834 North Capital of Texas Highway, Suite 304  
Austin, Texas 78759  
(512) 246-2224 Office  
(512) 580-4252 FAX  
Service of Documents: [service@zdfirm.com](mailto:service@zdfirm.com)

By:   
Cole Gumm  
State Bar No. 24088963  
**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served on all parties of record on this 26<sup>th</sup> day of January, 2022.

**Via E-service: *martinezja@jmeplaw.com*,  
*rendon@mgmsg.com***

James A. Martinez

Reid P. Rendon

Mounce, Green, Myerrs, Safi, Paxson & Galatzan

P.O. Box 1977

El Paso, Texas 79999

**ATTORNEY FOR DEFENDANTS**



COLE GUMM



**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Raisa Hernandez on behalf of Cole Gumm  
 Bar No. 24088963  
 rhernandez@zdfirm.com  
 Envelope ID: 61189626  
 Status as of 1/27/2022 8:23 AM MST

Associated Case Party: Sundt Construction, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Barbara Divis		bdivis@mgmsg.com	1/26/2022 4:44:58 PM	SENT
James Martinez		martinezja@jmeplaw.com	1/26/2022 4:44:58 PM	SENT
James Martinez		eservice@jmeplaw.com	1/26/2022 4:44:58 PM	SENT

## Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Cole Gumm		service@zdfirm.com	1/26/2022 4:44:58 PM	SENT

Associated Case Party: Joseph Riccillo

Name	BarNumber	Email	TimestampSubmitted	Status
James Martinez		eservice@jmeplaw.com	1/26/2022 4:44:58 PM	SENT
James Martinez		martinezja@jmeplaw.com	1/26/2022 4:44:58 PM	SENT

CAUSE NO. 2021DCV4058

CARLOS MOLINA-TORRES,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	171 <sup>st</sup> JUDICIAL DISTRICT
SUNDT CONSTRUCTION, INC., JOSEPH	§	
RICCILLO, and JOHN DOE	§	
	§	
Defendants.	§	
	§	EL PASO COUNTY, TEXAS


**PLAINTIFF’S FIRST NOTICE OF FILING AFFIDAVITS  
OF BUSINESS RECORDS CUSTODIAN**

This pleading is to give notice that pursuant to Texas Rules of Evidence 902(10), Plaintiff Carlos Molina-Torres has delivered the following Affidavit(s) of Business Record Custodian(s) and records to Defendants:

- 1) Border City Orthopedics;
- 2) The Hospitals of Providence (THOP) Transmountain Campus;
- 3) EP Wellness Associates (Dr. Francisco Guerra);
- 4) Sun City Orthopaedics;
- 5) Border Therapy Services;
- 6) University Medical Center (UMC) of El Paso;
- 7) The Hospitals of Providence (THOP) Transmountain Campus - Radiology; and
- 8) Diagnostic Outpatient Imaging (DOI).

Respectfully submitted,

Zinda Law Group, PLLC  
8834 North Capital of Texas Highway  
Suite 304  
Austin, Texas 78759  
(512) 246-2224 Office  
(512) 580-4252 FAX  
Service of Documents: [service@zdfirm.com](mailto:service@zdfirm.com)

By:   
Cole Gumm  
State Bar No. 24088963  
**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served on all parties of record on this 26<sup>th</sup> day of January, 2022.

**Via E-service: [martinezja@jmeplaw.com](mailto:martinezja@jmeplaw.com),  
[rendon@mgmsg.com](mailto:rendon@mgmsg.com)**

James A. Martinez  
Reid P. Rendon  
Mounce, Green, Myerrs, Safi, Paxson & Galatzan  
P.O. Box 1977  
El Paso, Texas 79999  
**ATTORNEY FOR DEFENDANTS**

  
Cole Gumm

**AFFIDAVIT OF BUSINESS RECORDS CUSTODIAN**

Before me, the undersigned authority, personally appeared Gloria Dominguez,  
who, being by me duly sworn, deposed as follows:

My name is Gloria Dominguez. I am of sound mind, capable of making this Affidavit,  
and personally acquainted with the facts herein stated:

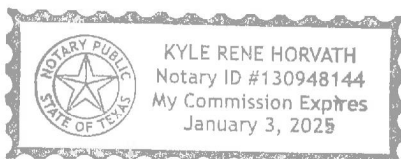
I am the custodian of the records of Border City Orthopedics (MEDICAL PROVIDER).

Attached hereto are copies of the records of Carlos Molina-Torres (PATIENT) from  
Border City Orthopedics (MEDICAL PROVIDER). These said records are kept by  
Border City Orthopedics (MEDICAL PROVIDER) in the regular course of business, and it  
was the regular course of business of Border City Orthopedics (MEDICAL PROVIDER)  
for an employee or representative of Border City Orthopedics (MEDICAL PROVIDER)  
with knowledge of the act, event, condition, opinion or diagnosis, recorded to make the  
record or to transmit information thereof to be included in such record; and the record was  
made at or near the time of reasonably soon thereafter.

The records attached hereto are the original and or exact duplicates of the original and are  
a part of this Affidavit.

Gloria Dominguez  
AFFIANT

SWORN AND SUBSCRIBED before me on the 11 day of Feb, 2021.



Kyle Rene Horvath  
Notary Public, State of Texas

**AFFIDAVIT OF BUSINESS RECORDS CUSTODIAN**

Before me, the undersigned authority, personally appeared Melissa Meraz  
who, being by me duly sworn, deposed as follows:

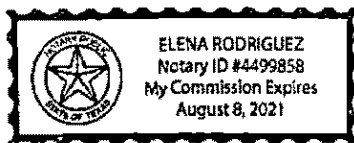
My name is Melissa Meraz I am of sound mind, capable of making this Affidavit,  
and personally acquainted with the facts herein stated:

I am the custodian of the records of THER TRANSMANUKU (MEDICAL PROVIDER).  
Attached hereto are copies of the records of Carlos Molina Torres (PATIENT) from  
THER TRANSMANUKU (MEDICAL PROVIDER). These said records are kept by  
THER TRANSMANUKU (MEDICAL PROVIDER) in the regular course of business, and it  
was the regular course of business of THER TRANSMANUKU (MEDICAL PROVIDER)  
for an employee or representative of THER TRANSMANUKU (MEDICAL PROVIDER)  
with knowledge of the act, event, condition, opinion or diagnosis, recorded to make the  
record or to transmit information thereof to be included in such record; and the record was  
made at or near the time of reasonably soon thereafter.

The records attached hereto are the original and or exact duplicates of the original and are  
a part of this Affidavit.

Melissa Meraz  
AFFIANT

SWORN AND SUBSCRIBED before me on the 19 day of January, 2021.



Elena Rodriguez  
Notary Public, State of Texas

**AFFIDAVIT OF BUSINESS RECORDS CUSTODIAN**

Before me, the undersigned authority, personally appeared Edolina Hernandez  
who, being by me duly sworn, deposed as follows:

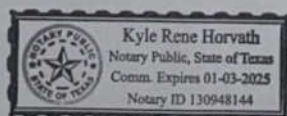
My name is Edolina Hernandez am of sound mind, capable of making this Affidavit,  
and personally acquainted with the facts herein stated:

I am the custodian of the records of EP Wellness Associates (MEDICAL PROVIDER).  
Attached hereto are copies of the records of Carlos Molina-Torres (PATIENT) from  
EP Wellness Associates (MEDICAL PROVIDER). These said records are kept by  
EP Wellness Associates (MEDICAL PROVIDER) in the regular course of business, and it  
was the regular course of business of EP Wellness Associates (MEDICAL PROVIDER)  
for an employee or representative of EP Wellness Associates (MEDICAL PROVIDER)  
with knowledge of the act, event, condition, opinion or diagnosis, recorded to make the  
record or to transmit information thereof to be included in such record; and the record was  
made at or near the time of reasonably soon thereafter.

The records attached hereto are the original and or exact duplicates of the original and are  
a part of this Affidavit.

[Signature]  
AFFIANT

SWORN AND SUBSCRIBED before me on the 23 day of July, 20 21.



[Signature]  
Notary Public, State of Tx



**AFFIDAVIT OF BUSINESS RECORDS CUSTODIAN**

Before me, the undersigned authority, personally appeared Yoli Torres,  
who, being by me duly sworn, deposed as follows:

My name is Yoli Torres, I am of sound mind, capable of making this Affidavit,  
and personally acquainted with the facts herein stated:

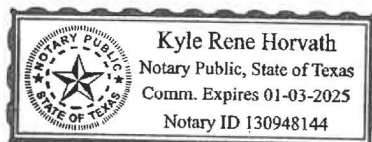
I am the custodian of the records of Dr. Sides (MEDICAL PROVIDER).

Attached hereto are copies of the records of Carlos Molina Torres (PATIENT) from  
Sun City Ortho (MEDICAL PROVIDER). These said records are kept by  
Sun City Ortho (MEDICAL PROVIDER) in the regular course of business, and it  
was the regular course of business of Sun City Ortho (MEDICAL PROVIDER)  
for an employee or representative of Sun City Ortho (MEDICAL PROVIDER)  
with knowledge of the act, event, condition, opinion or diagnosis, recorded to make the  
record or to transmit information thereof to be included in such record; and the record was  
made at or near the time of reasonably soon thereafter.

The records attached hereto are the original and or exact duplicates of the original and are  
a part of this Affidavit.

Yoli Torres  
AFFIANT

SWORN AND SUBSCRIBED before me on the 10 day of Sept, 20 21



Kyle Rene Horvath  
Notary Public, State of TX



From: Kate Peterson

Fax: 17633332598

To:

Fax: (915) 849-5806

Page: 4 of 7

03/16/2023 6:14 PM


**AFFIDAVIT OF BUSINESS RECORDS CUSTODIAN**

Before me, the undersigned authority, personally appeared Robyn Enz, RHIT  
who, being by me duly sworn, deposed as follows:

My name is Robyn Enz, RHIT, I am of sound mind, capable of making this Affidavit,  
and personally acquainted with the facts herein stated:

I am the custodian of the records of Border Therapy Services (MEDICAL PROVIDER).  
Attached hereto are copies of the records of Carlos Molina Torres (PATIENT) from  
Border Therapy Services (MEDICAL PROVIDER). These said records are kept by  
Border Therapy Services (MEDICAL PROVIDER) in the regular course of business, and it  
was the regular course of business of Border Therapy Services (MEDICAL PROVIDER)  
for an employee or representative of Border Therapy Services (MEDICAL PROVIDER)  
with knowledge of the act, event, condition, opinion or diagnosis, recorded to make the  
record or to transmit information thereof to be included in such record; and the record was  
made at or near the time of reasonably soon thereafter.

The records attached hereto are the original and or exact duplicates of the original and are  
a part of this Affidavit.

  
AFFIANT

SWORN AND SUBSCRIBED before me on the 5 day of Oct, 2021.

  
Notary Public, State of ~~Missouri~~ Missouri  
PAULA GISSING  
My Commission Expires  
May 27, 2023  
St. Charles County  
Commission #15635748



**AFFIDAVIT OF BUSINESS RECORDS CUSTODIAN**

Before me, the undersigned authority, personally appeared Clint Lee,  
who, being by me duly sworn, deposed as follows:

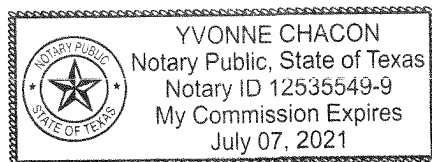
My name is Clint Lee, I am of sound mind, capable of making this Affidavit,  
and personally acquainted with the facts herein stated:

I am the custodian of the records of UMC of El Paso (MEDICAL PROVIDER).  
Attached hereto are copies of the records of Carlos Molina Torres (PATIENT) from  
UMC of El Paso (MEDICAL PROVIDER). These said records are kept by  
UMC of El Paso (MEDICAL PROVIDER) in the regular course of business, and it  
was the regular course of business of UMC of El Paso (MEDICAL PROVIDER)  
for an employee or representative of UMC of El Paso (MEDICAL PROVIDER)  
with knowledge of the act, event, condition, opinion or diagnosis, recorded to make the  
record or to transmit information thereof to be included in such record; and the record was  
made at or near the time of reasonably soon thereafter.

The records attached hereto are the original and or exact duplicates of the original and are  
a part of this Affidavit.

Clint Lee  
AFFIANT

SWORN AND SUBSCRIBED before me on the 23 day of February 2021.



Yvonne Chacon  
Notary Public, State of Texas

**AFFIDAVIT OF RADIOLOGY RECORDS CUSTODIAN**

Before me, the undersigned authority, personally appeared Laura Camarillo, who, being by me duly sworn, deposed as follows:

My name is Laura Camarillo, I am of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated:

I am the custodian of records of THOP-Transmountain Campus Radiology (MEDICAL PROVIDER).

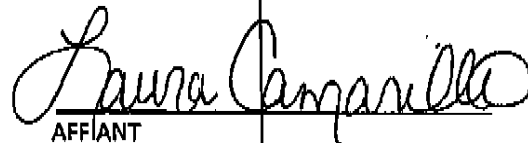
Attached hereto are copies of the records of Carlos Molina-Torres (PATIENT) from THOP-Transmountain Campus Radiology (MEDICAL PROVIDER). These said records are kept by THOP-Transmountain

Campus Radiology (MEDICAL PROVIDER) in the regular course of business, and it was the regular course of business of THOP-Transmountain Campus Radiology (MEDICAL PROVIDER) for an employee or

representative of THOP-Transmountain Campus Radiology (MEDICAL PROVIDER) with knowledge of the act,

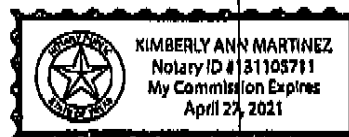
event, condition, opinion or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time of reasonably soon thereafter.

The records attached hereto are the original and or exact duplicates of the original and are a part of this Affidavit.

  
AFFIANT

SWORN AND SUBSCRIBED before me on the 24th day of February, 2021.

*Kimberly Ann Martinez*  
Notary Public, State of Texas



**AFFIDAVIT OF BUSINESS RECORDS CUSTODIAN**

Before me, the undersigned authority, personally appeared Jackie Costaneda  
who, being by me duly sworn, deposed as follows:

My name is Jackie Costaneda of sound mind, capable of making this Affidavit,  
and personally acquainted with the facts herein stated:

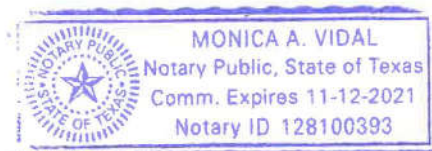
I am the custodian of the records of DOI (MEDICAL PROVIDER).  
Attached hereto are copies of the records of DOI<sup>M</sup> (PATIENT) from  
Carlos M. Torres  
DOI (MEDICAL PROVIDER). These said records are kept by  
DOI (MEDICAL PROVIDER) in the regular course of business, and it  
was the regular course of business of DOI (MEDICAL PROVIDER)  
for an employee or representative of DOI (MEDICAL PROVIDER)  
with knowledge of the act, event, condition, opinion or diagnosis, recorded to make the  
record or to transmit information thereof to be included in such record; and the record was  
made at or near the time of reasonably soon thereafter.

The records attached hereto are the original and or exact duplicates of the original and are  
a part of this Affidavit.

[Signature]  
AFFIANT

SWORN AND SUBSCRIBED before me on the 1<sup>st</sup> day of July, 2021

[Signature]  
Notary Public, State of



**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Raisa Hernandez on behalf of Cole Gumm  
 Bar No. 24088963  
 rhernandez@zdfirm.com  
 Envelope ID: 61189626  
 Status as of 1/27/2022 8:23 AM MST

Associated Case Party: Sundt Construction, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Barbara Divis		bdivis@mgmsg.com	1/26/2022 4:44:58 PM	SENT
James Martinez		martinezja@jmeplaw.com	1/26/2022 4:44:58 PM	SENT
James Martinez		eservice@jmeplaw.com	1/26/2022 4:44:58 PM	SENT

## Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Cole Gumm		service@zdfirm.com	1/26/2022 4:44:58 PM	SENT

Associated Case Party: Joseph Riccillo

Name	BarNumber	Email	TimestampSubmitted	Status
James Martinez		eservice@jmeplaw.com	1/26/2022 4:44:58 PM	SENT
James Martinez		martinezja@jmeplaw.com	1/26/2022 4:44:58 PM	SENT

CAUSE NO. 2021DCV4058

CARLOS MOLINA-TORRES,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	171 <sup>st</sup> JUDICIAL DISTRICT
SUNDT CONSTRUCTION, INC., JOSEPH	§	
RICCILLO, and JOHN DOE	§	
	§	
Defendants.	§	
	§	EL PASO COUNTY, TEXAS

PLAINTIFF’S FIRST NOTICE OF FILING  
AFFIDAVITS OF COST AND NECESSITY


This pleading is to give notice that pursuant to Texas Civil Practice and Remedies Code Section 18.001, Plaintiff has delivered the affidavits of cost and necessity and accompanying billing records for the following medical providers of Plaintiff Carlos Molina-Torres to Defendants:

- 1) University Medical Center of El Paso;
- 2) Texas Tech UHSC ELP;
- 3) The Hospitals of Providence Transmountain Campus;
- 4) Border City Orthopedics;
- 5) Diagnostic Outpatient Imaging;
- 6) Sun City Orthopaedics;
- 7) Dr. Francisco Guerra (EP Wellness Associates);
- 8) Border Therapy Services; and
- 9) Anesthesia Management Solutions.



Respectfully submitted,

Zinda Law Group, PLLC  
8834 North Capital of Texas Highway  
Suite 304  
Austin, Texas 78759  
(512) 246-2224 Office  
(512) 580-4252 FAX  
Service of Documents: [service@zdfirm.com](mailto:service@zdfirm.com)

By:   
\_\_\_\_\_  
Cole Gumm  
State Bar No. 24088963  
**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served on all parties of record on this 26<sup>th</sup> day of January, 2022.

**Via E-service: [martinezja@jmeplaw.com](mailto:martinezja@jmeplaw.com),  
[rendon@mgmsg.com](mailto:rendon@mgmsg.com)**

James A. Martinez  
Reid P. Rendon  
Mounce, Green, Myerrs, Safi, Paxson & Galatzan  
P.O. Box 1977  
El Paso, Texas 79999  
**ATTORNEY FOR DEFENDANTS**

  
\_\_\_\_\_  
Cole Gumm

9155217257

07:40:16 a.m. 01-21-2021

2 / 5

From National Record Retrieval 1.877.815.2003 Tue Jan 19 16:13:59 2021 MST Page 2 of 5

**AFFIDAVIT OF COST AND NECESSITY**

Before me, the undersigned authority, personally appeared Michelle Lorilla,  
who being by me duly sworn, deposed as follows:

My name is Michelle Lorilla, I am of sound mind, capable of making this Affidavit,  
and personally acquainted with the facts herein stated.

I am a custodian of records for University Medical Center of El Paso (**MEDICAL PROVIDER**).  
Attached to this Affidavit are records that provide an itemized statement of service and the charge  
for the service that University Medical Center of El Paso (**MEDICAL PROVIDER**) provided to  
Carlos Molina Torres (**PATIENT**).

The attached records are kept by University Medical Center of El Paso (**MEDICAL**  
**PROVIDER**) in the regular course and scope of business, and it was the regular course of business  
of University Medical Center of El Paso (**MEDICAL PROVIDER**) for an employee or  
representative of University Medical Center of El Paso (**MEDICAL PROVIDER**) with knowledge of  
the service provided, to make the record or to transmit the information to be included in the record.  
The records were made in the regular course of business at or near the time or reasonably soon  
after the time the service was provided. The records are the original or a duplicate of the original.

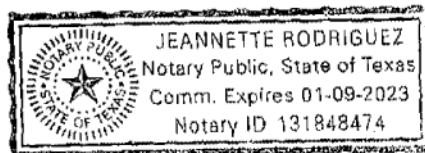
The services provided were necessary and the amount charged for the services was  
reasonable at the time and place that the services were provided.

The total amount **PAID** for the service was: \$ 587.94

The amount currently **UNPAID BUT STILL OWED** \$ 0.00  
after any credits or adjustments:

Michelle Lorilla  
AFFIANT

SWORN AND SUBSCRIBED before me on the 25 day of January, 2021.



[Signature]  
Notary Public, State of Texas

**AFFIDAVIT OF COST AND NECESSITY**

Before me, the undersigned authority, personally appeared Ana Deslongchamps, who being by me duly sworn, deposed as follows:

My name is Ana Deslongchamps, I am of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for Texas Tech UHSC ELP (MEDICAL PROVIDER). Attached to this Affidavit are records that provide an itemized statement of service and the charge for the service that Texas Tech UHSC ELP (MEDICAL PROVIDER) provided to Molina Torres (PATIENT).  
Carlos

The attached records are kept by Texas Tech UHSC ELP (MEDICAL PROVIDER) in the regular course and scope of business, and it was the regular course of business of Texas Tech UHSC ELP (MEDICAL PROVIDER) for an employee or representative of Texas Tech UHSC ELP (MEDICAL PROVIDER) with knowledge of the service provided, to make the record or to transmit the information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided.

The total amount **PAID** for the service was:

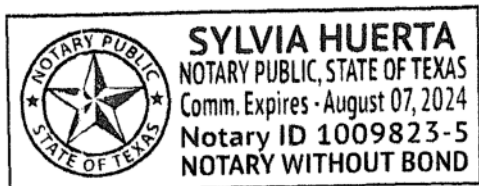
\$ 79.29

The amount currently **UNPAID BUT STILL OWED** after any credits or adjustments:

\$ 0.00

Ana Deslongchamps  
AFFIANT

SWORN AND SUBSCRIBED before me on the 29<sup>th</sup> day of January, 2021.



Sylvia Huerta  
Notary Public, State of Texas

**AFFIDAVIT OF COST AND NECESSITY**

Before me, the undersigned authority, personally appeared Toi Goldman,  
who being by me duly sworn, deposed as follows:

My name is Toi Goldman, I am of sound mind, capable of making this Affidavit,  
and personally acquainted with the facts herein stated.

I am a custodian of records for Hospital of Providence Transmountain (MEDICAL PROVIDER).

Attached to this Affidavit are records that provide an itemized statement of service and the charge  
for the service that Hospital of Providence Transmountain (MEDICAL PROVIDER) provided to  
Carlos Molina Torres (PATIENT).

The attached records are kept by Hospital of Providence Transmountain (MEDICAL PROVIDER) in the regular course and scope of business, and it was the regular course of business  
of Hospital of Providence Transmountain (MEDICAL PROVIDER) for an employee or  
representative of Hospital of Providence Transmountain (MEDICAL PROVIDER) with knowledge of  
the service provided, to make the record or to transmit the information to be included in the record.  
The records were made in the regular course of business at or near the time or reasonably soon  
after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was  
reasonable at the time and place that the services were provided.

The total amount PAID for the service was:

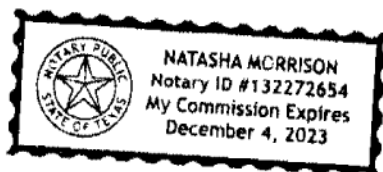
\$ 30,116.51

The amount currently UNPAID BUT STILL OWED  
after any credits or adjustments:

\$ 501.02

Toi Goldman  
AFFIANT

SWORN AND SUBSCRIBED before me on the 12<sup>th</sup> day of April 2021



Natasha Morrison  
Notary Public, State of Texas



**AFFIDAVIT OF COST AND NECESSITY**

Before me, the undersigned authority, personally appeared Lorena Maya,  
who being by me duly sworn, deposed as follows:

My name is Lorena Maya, I am of sound mind, capable of making this Affidavit,  
and personally acquainted with the facts herein stated.

I am a custodian of records for Border City Ortho (MEDICAL PROVIDER).  
Attached to this Affidavit are records that provide an itemized statement of service and the charge  
for the service that Border City Ortho (MEDICAL PROVIDER) provided to  
Carlos Molina Torres (PATIENT).

The attached records are kept by Border City Ortho (MEDICAL  
PROVIDER) in the regular course and scope of business, and it was the regular course of business  
of Border City Ortho (MEDICAL PROVIDER) for an employee or  
representative of Border City Ortho (MEDICAL PROVIDER) with knowledge of  
the service provided, to make the record or to transmit the information to be included in the record.  
The records were made in the regular course of business at or near the time or reasonably soon  
after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was  
reasonable at the time and place that the services were provided.

The total amount **PAID** for the service was:

\$ 2555.48

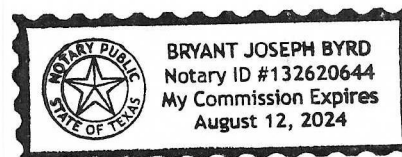
The amount currently **UNPAID BUT STILL OWED**  
after any credits or adjustments:

\$ 350.00

Lorena Maya  
AFFIANT

SWORN AND SUBSCRIBED before me on the 12<sup>th</sup> day of MAY, 20 21.

Bryant Joseph Byrd  
Notary Public, State of Texas



**AFFIDAVIT OF COST AND NECESSITY**

Before me, the undersigned authority, personally appeared Joselyn Medina, who being by me duly sworn, deposed as follows:

My name is Joselyn Medina. I am of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for WSHC (MEDICAL PROVIDER).

Attached to this Affidavit are records that provide an itemized statement of service and the charge for the service that Diagnostic Outpatient Imaging (MEDICAL PROVIDER) provided to Carlos Molina-Torres (PATIENT).

The attached records are kept by WSHC (MEDICAL PROVIDER) in the regular course and scope of business, and it was the regular course of business of Diagnostic Outpatient Imaging (MEDICAL PROVIDER) for an employee or representative of Diagnostic Outpatient Imaging (MEDICAL PROVIDER) with knowledge of the service provided, to make the record or to transmit the information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided.

The total amount PAID for the service was:

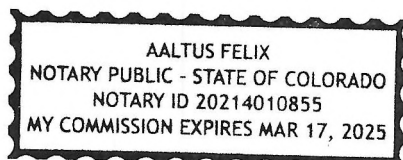
\$ 0

The amount currently UNPAID BUT STILL OWED after any credits or adjustments:

\$ 3,479.00

SWORN AND SUBSCRIBED before me on the 17 day of July, 2021.

[Signature]  
AFFIANT



[Signature]  
Notary Public, State of Colorado



**AFFIDAVIT OF COST AND NECESSITY**

Before me, the undersigned authority, personally appeared Jocelyn Medina,  
who being by me duly sworn, deposed as follows:

My name is Jocelyn Medina, I am of sound mind, capable of making this Affidavit,  
and personally acquainted with the facts herein stated.

I am a custodian of records for WSHC (MEDICAL PROVIDER).

Attached to this Affidavit are records that provide an itemized statement of service and the charge  
for the service that Sun City Ortho (MEDICAL PROVIDER) provided to  
Carlos Molina-Torres (PATIENT).

The attached records are kept by WSHC (MEDICAL  
PROVIDER) in the regular course and scope of business, and it was the regular course of business  
of Sun City Ortho (MEDICAL PROVIDER) for an employee or  
representative of Sun City Ortho (MEDICAL PROVIDER) with knowledge of  
the service provided, to make the record or to transmit the information to be included in the record.  
The records were made in the regular course of business at or near the time or reasonably soon  
after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was  
reasonable at the time and place that the services were provided.

The total amount PAID for the service was:

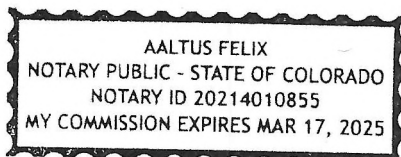
\$ 0

The amount currently UNPAID BUT STILL OWED  
after any credits or adjustments:

\$ 1,988.00

[Signature]  
AFFIANT

SWORN AND SUBSCRIBED before me on the 27 day of July, 2021.



[Signature]  
Notary Public, State of Colorado



**AFFIDAVIT OF COST AND NECESSITY**

Before me, the undersigned authority, personally appeared Amanda Montes, who being by me duly sworn, deposed as follows:

My name is Amanda Montes I am of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for Francisco Guerra (MEDICAL PROVIDER). Attached to this Affidavit are records that provide an itemized statement of service and the charge for the service that Francisco Guerra (MEDICAL PROVIDER) provided to Carlos Molina Tor (PATIENT).

The attached records are kept by Francisco Guerra (MEDICAL PROVIDER) in the regular course and scope of business, and it was the regular course of business of Francisco Guerra (MEDICAL PROVIDER) for an employee or representative of Francisco Guerra (MEDICAL PROVIDER) with knowledge of the service provided, to make the record or to transmit the information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided.

The total amount PAID for the service was:

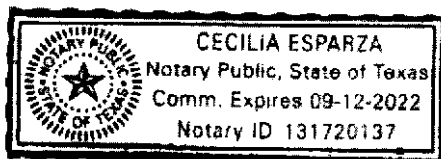
\$ 221.07

The amount currently UNPAID BUT STILL OWED after any credits or adjustments:

\$ 0.

Amanda Montes  
AFFIANT

SWORN AND SUBSCRIBED before me on the 10 day of Sept, 2021.



[Signature]  
Notary Public, State of Texas

From: Kate Peterson

Fax: 17633332598

To:

Fax: (915) 849-5806

Page: 5 of 7

09/16/2021 5:16 PM

**AFFIDAVIT OF COST AND NECESSITY**

Before me, the undersigned authority, personally appeared Robyn Enz, RHIT, who being by me duly sworn, deposed as follows:

My name is Robyn Enz, RHIT, I am of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for Border Therapy Services (MEDICAL PROVIDER). Attached to this Affidavit are records that provide an itemized statement of service and the charge for the service that Border Therapy Services (MEDICAL PROVIDER) provided to Carlos Molina Torres (PATIENT).

The attached records are kept by Border Therapy Services (MEDICAL PROVIDER) in the regular course and scope of business, and it was the regular course of business of Border Therapy Services (MEDICAL PROVIDER) for an employee or representative of Border Therapy Services (MEDICAL PROVIDER) with knowledge of the service provided, to make the record or to transmit the information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided.

The total amount **PAID** for the service was:

\$ 0.00

The amount currently **UNPAID BUT STILL OWED** after any credits or adjustments:

\$ 12,155.00

[Signature]  
AFFIANT

SWORN AND SUBSCRIBED before me on the 5 day of Oct, 2021.

Paula G Gissing  
Notary Public, State of ~~Texas~~ Missouri



PAULA G GISSING  
My Commission Expires  
May 27, 2023  
St. Charles County  
Commission #15635748

AMIB  
53419

**AFFIDAVIT OF COST AND NECESSITY**

Before me, the undersigned authority, personally appeared Ashley Hollon, who being by me duly sworn, deposed as follows:

My name is Ashley Hollon I am of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for Anesthesia mgmt (MEDICAL PROVIDER). Attached to this Affidavit are records that provide an itemized statement of service and the charge for the service that Anesthesia mgmt (MEDICAL PROVIDER) provided to Carlos Molina (PATIENT).  
Torres

The attached records are kept by Anesthesia mgmt (MEDICAL PROVIDER) in the regular course and scope of business, and it was the regular course of business of Anesthesia mgmt (MEDICAL PROVIDER) for an employee or representative of Anesthesia mgmt (MEDICAL PROVIDER) with knowledge of the service provided, to make the record or to transmit the information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided.

The total amount PAID for the service was:

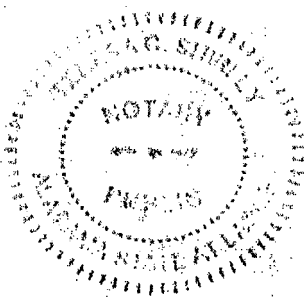
\$ 334.38

The amount currently UNPAID BUT STILL OWED after any credits or adjustments:

\$ 0

Ashley Hollon  
AFFIANT

SWORN AND SUBSCRIBED before me on the 10<sup>th</sup> day of Oct, 2021.



Debra Collier  
Notary Public, State of Texas  
Alabama

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Raisa Hernandez on behalf of Cole Gumm  
 Bar No. 24088963  
 rhernandez@zdfirm.com  
 Envelope ID: 61189626  
 Status as of 1/27/2022 8:23 AM MST

Associated Case Party: Sundt Construction, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Barbara Divis		bdivis@mgmsg.com	1/26/2022 4:44:58 PM	SENT
James Martinez		martinezja@jmeplaw.com	1/26/2022 4:44:58 PM	SENT
James Martinez		eservice@jmeplaw.com	1/26/2022 4:44:58 PM	SENT

## Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Cole Gumm		service@zdfirm.com	1/26/2022 4:44:58 PM	SENT

Associated Case Party: Joseph Riccillo

Name	BarNumber	Email	TimestampSubmitted	Status
James Martinez		eservice@jmeplaw.com	1/26/2022 4:44:58 PM	SENT
James Martinez		martinezja@jmeplaw.com	1/26/2022 4:44:58 PM	SENT

CAUSE NO. 2021DCV4058

CARLOS MOLINA-TORRES,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	171 <sup>st</sup> JUDICIAL DISTRICT
SUNDT CONSTRUCTION, INC., JOSEPH	§	
RICCILLO, and JOHN DOE	§	
	§	
Defendants.	§	
	§	EL PASO COUNTY, TEXAS

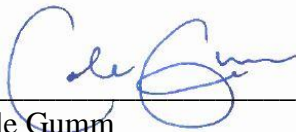
**PLAINTIFF’S CERTIFICATE OF WRITTEN DISCOVERY**

Plaintiff Carlos Molina-Torres certifies that the following discovery responses were served on all parties to this matter by and through their attorneys of record on February 25, 2022:

- 1. Plaintiff’s Objections & Answers to Defendants’ First Set of Interrogatories; and
- 2. Plaintiff’s Responses to Defendants’ First Requests for Admissions.

Respectfully submitted,

**Zinda Law Group, PLLC**  
8834 North Capital of Texas Highway, Suite 304  
Austin, Texas 78759  
(512) 246-2224 Office  
(512) 580-4252 FAX  
Service of Documents: [service@zdfirm.com](mailto:service@zdfirm.com)

By:   
Cole Gumm  
State Bar No. 24088963  
**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served on all parties of record on this 25<sup>th</sup> day of February, 2022.

**Via E-service: *martinezja@jmeplaw.com*,  
*rendon@mgmsg.com***

James A. Martinez

Reid P. Rendon

Mounce, Green, Myerrs, Safi, Paxson & Galatzan

P.O. Box 1977

El Paso, Texas 79999

**ATTORNEY FOR DEFENDANTS**



COLE GUMM

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Raisa Hernandez on behalf of Cole Gumm  
 Bar No. 24088963  
 rhernandez@zdfirm.com  
 Envelope ID: 62095701  
 Status as of 2/25/2022 1:44 PM MST

Associated Case Party: Sundt Construction, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Barbara Divis		bdivis@mgmsg.com	2/25/2022 1:34:43 PM	SENT
James Martinez		martinezja@jmeplaw.com	2/25/2022 1:34:43 PM	SENT
James Martinez		eservice@jmeplaw.com	2/25/2022 1:34:43 PM	SENT

## Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Cole Gumm		service@zdfirm.com	2/25/2022 1:34:43 PM	SENT

Associated Case Party: Joseph Riccillo

Name	BarNumber	Email	TimestampSubmitted	Status
James Martinez		eservice@jmeplaw.com	2/25/2022 1:34:43 PM	SENT
James Martinez		martinezja@jmeplaw.com	2/25/2022 1:34:43 PM	SENT